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09/157,998    09/22/98    LESSER

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| EXAMINER |
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LM02/0926

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| ROMAIN, T |              |
| ART UNIT  | PAPER NUMBER |

2765

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DATE MAILED:

09/26/00

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trad marks**

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# Office Action Summary

Application No.  
**09/157,998**

Applicant(s)

**Lesser**

Examiner

**Romain Jeanty**

Group Art Unit  
**2765**



☒ Responsive to communication(s) filed on Jul 10, 2000

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 35 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire three month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claim

☒ Claim(s) 1-9 and 23-48 is/are pending in the applicat

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☒ Claim(s) 1-9 and 23-48 is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☒ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☒ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

— SEE OFFICE ACTION ON THE FOLLOWING PAGES —

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### DETAILED ACTION

1. Applicant has originally filed claims 1-13. On a later amendment filed on 1/26/99, claims 1-13 were to be canceled and newly claims 1-9 were filed in place of originally filed claims 1-13. Accordingly, newly then added claims 1-9 should have been relabelled as respective claims 14-22. In the presently filed amendment dated 7/10/00, applicant has amended claims 1-9 and has also added claims 10-35. According to CFR 1.126, claims 10-35, <sup>claim</sup> are renumbered as respective claims 23-48. <sup>14-22 which were in prop</sup> Accordingly, claims 1-9 and 23-48 are pending in the instant application.
2. Claims 35 and 36 are objected to under 37 CFR 1.75© as being in improper form because a multiple dependent claim 26 should not depend on another multiple dependent claim 18. See MPEP § 608.01(n). Accordingly, claims 26 and 27 are not been further treated on the merits.

### *Claim Rejections - 35 USC § 103*

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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4. Claims 1-9 and 23-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Ornstein et al.** (The Computer-based medical record: current status) in view of **Brimm et al.** (Patent No.51077,666) **Cave et al.**

Claims I and 8, **Ornstein et al.** discloses a medical system comprising the steps of (a) Entering information on data forms, the forms as in most medical forms consist of a plurality of items and with one or less sub-menu for any item. ( See Page 8, paragraph 2) (b) Ornstein et al also teaches storing the entered information (Page 8 paragraphs 2-3) as the system of Ornstein et al is a computerized system. Placing the entered information in data tables is equivalent to storing the information in a database or data structures for easy access and retrieval purposes. Note also page 12, Paragraph 1 of Ornstein. Storing requirements in the data tables for utilizing the entered information wherein the requirements including one or more criteria for billing, billing levels and/or text output with the text output including one or more than one of the following correspondence, quality control and internal record keeping are also taught by Ornstein et al. Note page 9, paragraph 2.

Applicant has argued that Ornstein et al is an article written years before the introduction of HFCA guidelines and their impact on medical billing requirements and related information gathering and processing and therefore does not teach specific items to support billing at a given level for physician's services.

In response, applicant's independent claim 1 merely recite "requirements" but does not link the term "requirements" to guidelines or requirements supported by HFCA. Ornstein et al

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clearly teaches billing patient for rendered services. Note page 9 of the article. Furthermore such is done in most hospitals or clinics. Applicant should also note that Ornstein also discusses requirements by the HFCA. Note page 7 of the article.

Furthermore, in response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., HFCA requirements allegedly to be claimed in independent claim 1) are not recited in the rejected claim 1. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Assuming such is explicitly claimed, the HFCA requirements is well known in the medical art. Note column 2, line 44 to column 3, line 60 of Cave et al. It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to incorporate the HFCA coding requirements into the system of Ornstein et al for the purposes of describing physician work for medical and surgical procedures, diagnostic tests, and other medical services rendered to patients. Note specifically column 2, lines 44-53 of **Cave et al.** It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the well known HFCA teachings of Cave et al into Ornstein et al with the motivation of linking medical costs or procedures to actual rendered services for billing purposes.

Linking and Comparing the information is suggested in the Ornstein et al et al's reference because most information on medical system must be linked so that a given treatment or care is

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appropriately billed based on treatment code, diagnosis code and billing code. Determining requirements met by the entered information, requirements comprising requirements for billing outputs, for text output, internal record keeping, and text output such as correspondence outputs such are facilitated, automated and simplified, and whereby the required requirements met by the entered information can be determined (Page 9 Paragraph 1, Page 4 paragraph 3, and page 12 paragraph 2). Storing in data tables requirements for utilizing the entered information (Page 5, paragraph 2). It would have been obvious in the system for the data to be stored in data tables for easy access and viewing by the user. In addition, **Brimm et al.** disclose a medical information system with automatic updating of task list in response to charting interventions of task list window into associated form. Task lists and medical data are stored in data tables (See Figs. 4-10). It would have been obvious to a person of ordinary skill in the art at the time of the applicant's invention to include a data table form into the combined teachings of Ornstein et al and Cave et al's system as taught by Brimm et al. with the motivation to visibly present items to the user thus creating a user friendly interface. At the user's option documents would have been outputted as desired because the computerized medical system includes a print function for automating, simplifying and facilitating patients with the provision of a physical copy of their records.

Claim 2, **Ornstein et al** disclose Physician Xficro System, Inc( PMSI) on page 7. It is a general application to be used to any hospital system. It would have been obvious to a person of ordinary skill in the art at the time of the applicant's invention to customize or change the general

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application of PMSI to meet an organization profile on preferences so as to use the software system. Forms would be opened in the desired format when using the software with a general computer-system.

Claim 3, **Ornstein et al** fail to disclose information the user of requirements met by the entered information, whereby the user is helped to ascertain that the entered information meets the requirements. Such is old and well known in the medical industry that each drug or procedure administered to a patient will meet a billing requirement based on Information Classification Disease Codes (ICD-9) or other types of codes and diagnostics as discussed above as being taught by Cave et al.

Claim 4, **Ornstein et al** disclose steps (a-c) as a user of the computer system entering patient's answers from queries. Data such as procedures, level of care and billing are entered into various tables or forms so as to obtain and match proper billing codes which will be mailed to insurance companies, attorneys and/or other referred physicians (Page 12 Paragraph 1).

Claim 5, **Ornstein et al** fail to explicitly disclose modifying the data tables so as to modify or update the requirements. However, given ICD-9 codes may comprise of general sub-codes so that a user may select the appropriate code (updated code) for a given disease which will form new requirements for quality of care or billing.

Claim 6, ) **Ornstein et al** fail to explicitly disclose input means may be CPU comprise choices of laptops capable of being used in a network system. However, input means may be CPUs which comprise choices of laptops capable of being used in a network system. In addition,

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Steven et al disclose a PMSI system which includes transcription means and voice recognition system storage means, computer means and various tables/charts to provide convenient usages to a user (page 6, Paragraph 3) and network means (page 8).

Claim 7, the combination of **Ornstein et al**, **Brimm et al** and **Cave et al** fails to explicitly disclose linking within a database information entered into data forms with narrative information and including information entered by typing or dictation. Linking within a database information entered into data forms with narrative information and including information entered by typing or dictation is old and well known in the art. It would have been obvious to a person of ordinary skill in the art at the time of the applicant's invention to include linking within a database information entered into data forms with narrative information into the combination of **Ornstein et al**, **Brimm et al** and **Cave et al** with the motivation of faster data entry, and prevent wasting of time for data entry..

Claim 9, **Steven et al.** disclose a process according to claim 7 for health care organizations and individual health care deliverers further comprising:

Separating the data forms into at least two groups comprising patient demographics groups, medical history groups, past medical history groups .....is usually performed by most medical systems. Note also (page 10 Paragraph 4).

Storing reporting requirements in the data tables, the reporting requirements comprising requirements for government, insurance company reporting requirements, and other health care or



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health care organization reporting requirements (Page 12 Paragraph 1) and column 2 line 44 to column 3 line 60 of Cave et al.

Using software means to determine scores for the entered information according to the reporting requirement are taught by Cave et al.

(d) Generating at least one selected output from the stored data, the output being selectable from a plurality of stored outputs useful for at least one intended recipient (Page 1, Paragraph 1, Page 9, paragraphs 1, 2 and 3, Page 12, paragraph 1 or Ornstein et al).

As in most medical systems, the outputs of the combined teachings of Ornstein et al, Brimm et al and Cave et al comprises billing output, quality control output, text output, chart note output, internal output record keeping output, prescription output, correspondence output and communications output.

As per claim 23, the combined system of Ornstein et al, Brimm et al and Cave et al comprises means for entering data and/or free text information on forms by an input means of a computer system. The requirements data are taught by Cave et al. Data are also stored in memory. Linking data using a network are taught by Ornstein et al. Using software means and algorithm to compare entered information and free text information with the requirements are taught by Cave et al. Information in each of the references are reviewable. The steps of gathering, facilitating, entering, liking and scoring are all taught by the combined teachings of Ornstein et al, Brimm et al, and Cave et al. The motivation to combine these teachings are provided above.

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As per claim 24, note pages 8-11 of Ornstein et al.

As per claim 25, note pages 8-11 of Ornstein et al and the teachings of Brimm et al.

As per claim 26, note the teachings of Cave et al. Cave et al teachings having billing codes. Modifying data forms is taught by Brimm et al and Ornstein et al. It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine these teachings with the motivation of maintaining a clear patients billing record.

As per claim 27, applicant is referred to the rejection of claim 9 above.

As per claim 28, Ornstein et al discloses a process for implementing standards for medical care and treatment of a patient. The system comprises the claimed steps of providing and using. Note pages 8-11 of Ornstein et al. Ornstein also suggests using charts for inputting patient's data. Charts and/or forms for inputting medical data are also taught by Brimm et al. Ornstein et al also teaches billing the patient based on billing requirements of services rendered to the patients. Providing billing codes is not explicitly taught by Ornstein et al. Such is taught by Cave et al. Note column 2, line 44 to column 3, line 60 of Cave et al. It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to incorporate the HFCA coding requirements into the system of Ornstein et al for the purposes of describing physician work for medical and surgical procedures, diagnostic tests, and other medical services rendered to patients. Note specifically column 2, lines 44-53 of **Cave et al**. It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the well known HFCA teachings of Cave et al into Ornstein et al and Brimm et al with the motivation of linking medical costs or

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procedures to actual rendered services for accurate billing of patient related administered services.

Linking gathered information, requirements, scores and the processing steps for generating bills that comply with government or industry standards based at least in part on the processed information are taught by Cave et al.

As per claim 29, the forms of Brimm et al includes menus and submenus.

As per claim 30, note page 7 of Ornstein et al and column 2 of Cave et al.

As per claim 31, each of the combined references comprises means for typing or writing.

As per claim 32, note page 8 of Ornstein et al.

As per claim 33, Ornstein et al teaches customizing forms. The Examiner takes Official Notice that forms usually contains check boxes, list boxes, text boxes and radio buttons. Having these features in the combined system above would have been obvious to the skilled artisan for facilitating quick entry of data on computerized forms or charts.

As per claim 34, the combined system comprises at least one more databases for linking gathered information.

As per claim 37, Ornstein suggests using laptop computers.

As per claims 38-39, updating the requirements to comply with changes in the government or industry standards in the combined system above would have been obvious to the skilled artisan whenever new requirements are set so as to be in compliance and in order to avoid possible fines by the government.

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As per claim 40, the system of Ornstein et al comprises a desktop computer. Note page 8 of Ornstein et al.

As per claims 41 and 48, Ornstein et al teaches an apparatus for collecting data and generating output based on the collected data. The data is being received in real time using remote connections and updating functions. Note pages 8-11 of Ornstein et al. Charts and input forms are taught by Brimm et al. The programming and processing steps are not explicitly taught by Ornstein et al. Cave et al teaches that government or industry standards requirements such as the HFCA requirements are well known in the medical art. Note column 2, line 44 to column 3, line 60 of Cave et al. It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to incorporate the HFCA coding requirements into the system of Ornstein et al for the purposes of describing physician work for medical and surgical procedures, diagnostic tests, and other medical services rendered to patients. Note specifically column 2, lines 44-53 of **Cave et al.** It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the well known HFCA teachings of Cave et al into Ornstein et al and Brimm et al with the motivation of linking medical costs or procedures to actual rendered services for billing purposes.

As per claim 42, most forms contain menus and submenus displayable by the computer to the user wherein the submenus are further limited to one or fewer for each item. Having such a feature in the combined teachings of Ornstein et al, Brimm et al and Cave et al would have been obvious to the skilled artisan with the motivation of allowing quick entry on the forms.

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As per claim 43, Ornstein et al teaches customizing the forms.

As per claim 44, Ornstein et al teaches customizing forms. The Examiner takes Official Notice that forms usually contains check boxes, list boxes, text boxes and radio buttons. Having these features in the combined system above would have been obvious to the skilled artisan for facilitating quick entry of data on computerized forms or charts.

As per claim 45, Ornstein suggests using laptop computers for collecting, storing and manipulating data.

As per claim 46, note page 8 of Ornstein et al.

As per claim 47, the data in each of the references comprises medical data related to a patient.

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

6.

***Conclusion***


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Romain Jeanty, whose telephone number is (703) 308-9585. The examiner can normally be reached on Weekdays from 8:00 AM to 4:30 PM.

The fax phone number for this Art Unit is (703) 305-0040.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 305-3900.

RJ

September 25, 2000

  
FRANTZY POINVIL  
PRIMARY EXAMINER  
Au 2768